

The Death Penalty in America

Burton Joseph

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proved to be workable, and employers and unions did adjust their behavior in consonance with public policy.

Presidents of the United States have probably habitually injected the authority of their office into labor situations in basic industries, particularly the steel industry. There was President Truman's action, and most recently, there was the more suave action of President Johnson. Many hold that this is an unwarranted interference with the theory and purpose of collective bargaining. This action would probably not be an inconsistency under Professor Ross' scheme.

If the book has an overriding thesis, it is that understanding of public policy in its influence upon behavior can best be reached by examining the specific way in which the law works. In other words, the prime method of approach has been empirical. The author confesses an uneasiness when confronted with generalizations about the behavior of unions and employers which are not only inconsistent with his experience but are not supported by probative evidence.

So, it can be said that a book under the title of *The Government as a Source of Union Power* may present a thesis which is not startling to anyone. Varying opinions have already been formed, and while the book may lead many horses to water, few will drink. The book expresses the author's reverence of the institution of collective bargaining and his respect for the N.L.R.B. which polices this area, and it is an excellent history of a facet of the large industrial relations area.

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The Death Penalty in America. Edited by Hugo Adam Bedau. New York: Doubleday, Inc., 1964. Pp. 584. \$1.95.

Periodically in our country, a great debate arises on an issue which deeply stirs the conscience of a significant part of our citizenry, numerically or intellectually. So it is with the great debate regarding the preservation or abolition of the death penalty for criminal offenses.

To assist in forming a rational, informed opinion on this subject, Hugo Adam Bedau has compiled an impressive anthology analyzing the problem of homicide. He states the arguments for and against the death penalty and marshals the statistical and sociological evidence which would affect one's decision. The anthology concludes with significant case histories in an attempt to graphically emphasize the human aspect of this debate.

"[T]he punishment of death is not cruel, within the meaning of that word as used in the Constitution," the Supreme Court has said.¹ Nevertheless, the Court has also acknowledged that the eighth amendment to the Constitution, which prohibits cruel and unusual punishment, is dynamic and not static in its meaning. In *Weems v. United States*,² the Court said, "time works changes, bringing into existence new conditions and purposes. Therefore, a principle to be vital must be capable of wider application than the mischief which gave it birth."³ The question is raised, focused and analyzed

¹ *In re Kemmler*, 136 U.S. 436 at 447 (1890).

² 217 U.S. 349 (1910).

³ *Id* at 373.

whether capital punishment today is consistent with the increased sophistication and moral tenor of our society.

Into the cauldron of knowledge, Mr. Bedau has poured the relevant statistics, the moral, religious and philosophical arguments on which an opinion can be intelligently formed as to the advisability, the need, and the moral justification of the death penalty. As a professor at Reed College and a Carnegie Fellow in Law and Philosophy at Harvard Law School, Professor Bedau personally adds a dozen essays where he finds it necessary to fill the void in existing available literature.

Although the editor makes no pretense regarding his partiality to the abolitionists, perhaps the most compelling arguments found in this book for the abolition of the death penalty seem to be exactly those arguments offered as a plea for the retention of the supreme penalty. Consider, for example, the argument of J. Edgar Hoover:

As a representative of law enforcement, it is my belief that a great many of the most vociferous cries for abolition of capital punishment emanate from those areas of our society which have been insulated against the horrors man can and does perpetrate against his fellow beings. Certainly, penetrative and searching thought must be given before considering any blanket cessation of capital punishment in a time when unspeakable crimes are being committed. The savagely mutilated bodies and mentally ravaged victims of murderers, rapists and other criminal beasts beg consideration when the evidence is weighed on both sides of the scales of Justice.⁴

This attitude, in juxtaposition to the sociological studies, religious and philosophical presentations and columns of facts and statistics regarding recidivism, offered by the abolitionists, seems to be self-defeating. Perhaps, it may be argued that this quotation, out of context, is merely a rhetorical device to depict the proponents of the death penalty as hysterical and irrational. I leave it to the reader to determine whether Mr. Hoover, or for that matter Edward J. Allen (Chief of Police, Santa Ana, California), Professor Sidney Hook or Jacques Barzun, fare any better as advocates of the retention of the death penalty.

It is in the concluding chapter of this anthology that I find the most compelling arguments. The talented journalists who humanize the problem of human fallibility in specific cases seem to make the point in such a way that is otherwise lost in the morass of statistics and sociological gibberish. This conclusion reveals my own partiality; however, the ultimate decision of the reader will hopefully be more informed on having acquainted himself with *The Death Penalty In America*, by Hugo Adam Bedau.

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⁴ BEDAU, *THE DEATH PENALTY IN AMERICA* 130 (1964).

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Gomillion versus Lightfoot. By BERNARD TAPER. New York: McGraw Hill Book Company, Inc., 1962. Pp. 131. \$1.95.

Rapid changes in the law of apportionment have taken place in the few years following the United States Supreme Court decision in *Gomillion v.*